

MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
September 23, 2005
Santa Fe

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order on September 23, 2005 at 10:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey, co-chair.

PRESENT

Rep. Gail Chasey, co-chair
Sen. Mary Jane M. Garcia, co-chair
Sen. John T.L. Grubescic
Rep. Danice Picraux
Sen. John C. Ryan
Rep. Gloria C. Vaughn

ABSENT

Advisory Members

Rep. Ray Begaye
Sen. Joseph J. Carraro
Rep. Luciano "Lucky" Varela

Sen. Rod Adair
Sen. Dede Feldman
Sen. Linda M. Lopez
Sen. James G. Taylor
Rep. Teresa A. Zanetti

Staff

Ramona Schmidt
Cristina Martinez

The minutes of the June 20, 2005 meeting were approved upon motion duly made, seconded and passed without objection.

Representative Chasey welcomed all to the Tobacco Settlement Revenue Oversight Committee (TSROC) meeting and asked the members of the committee to introduce themselves.

David Vigil, program manager, Tobacco Use Prevention and Control (TUPAC) program, Department of Health (DOH), spoke to the committee about chronic disease and the impact tobacco use has on health. Mr. Vigil introduced Larry Elmore, TUPAC program manager, who gave an overview of the program's structure, how it operates and highlights of its successes and activities. He noted that tobacco costs New Mexico \$853 million in direct medical expenses and lost productivity annually. He gave a recent history of funding for TUPAC and reviewed the funds, TUPAC programs and program goals. Mr. Elmore stated the components are interlocked

with a comprehensive system built around each. The outcome of the efforts, the funding and the support from the legislature, governor and communities have resulted in 15 percent fewer New Mexico adult smokers in 2004 as compared to 2001. The decline in the percentage of smokers between 2001 (23.8 percent) and 2004 (20.3 percent) was statistically significant. The estimated economic benefits from the recent reduction in adult smoking in New Mexico were reviewed. Goals include preventing initiation among youth and young adults and promoting quitting among youth and adults. He noted a major development for this year was the initiation of the promote quitting help line, "1-800-QUIT NOW", with expanded hours of service and more comprehensive counseling. Mr. Elmore stated studies of successful tobacco control programs show that a program must be comprehensive, accountable, adequately funded and sustained over time. Mr. Elmore and Mr. Vigil stood for questions.

On questioning from committee members, the presenters noted that:

- smoking is a risk factor to certain populations that leads to an addiction that leads to a disease that can kill a person;
- the overall funding for the program for FY 2006 from the state general fund was \$6 million and CDC funding was \$1 million, and the request for 2007 is a flat budget of \$6 million;
- the flat budget request came from the Department of Finance and Administration (DFA); and
- TUPAC would like to play a part in deciding what performance measures to require.

Representative Varela introduced Kacee Collard, fiscal analyst, Legislative Finance Committee (LFC), who reviewed the performance measures from the 2003 recommendation and the amounts previously funded and stated she is addressing the current funding requests. Representative Chasey asked that the LFC also consider what performance measures DOH is using and what may already be included with current contracts.

Committee staff will work with the LFC to address FY 2007 funding requests and performance measures. Discussion occurred as to how to balance the decrease in smoking and the maintenance of the current revenue stream and the need to see if smoking is actually decreasing due to declining purchases of cigarettes throughout the state based on increased prices, or if the purchasing is shifting to Indian reservations or the internet. Mr. Elmore stated there are measurements built into TUPAC contracts and there have been contracts terminated when the deliverables were not met.

Mr. Elmore will provide Representative Varela with a copy of the RFP for the SMART Moves program. It was clarified there is subcontracting with the Alliance for Boys and Girls Clubs for prevention and cessation services with emphasis on SMART Moves programming for youth.

Representative Chasey asked Mr. Elmore to supply an estimate to the LFC of the increase in funding needed for the quit line to be brought back up to offer three intervention calls to everyone based on the projection of the estimated calls and the amount needed for funding of nicotine replacement therapy.

Judith Gabriel, DOH, gave a presentation on the Diabetes Prevention and Control (DPC) program. She reviewed the diabetes program goals and noted one in 11 adults has diabetes. Ms. Gabriel stated the national diabetes trends are not good: child diabetes nationally has increased at an alarming rate, and from 1998 to 2004 there was an increase in the effectiveness of the performance measures. She noted the projects funded in FY 2005 included public education and community outreach, physical activity program, the Kitchen Creations cooking school classes, syringe/needle disposal and exchange MOA with the DOH Harm Reduction program.

Discussion occurred as to how diabetes costs the state, what is being done in rural areas and how the DPC program is working to address the high diabetes rate in the Native American population. Ms. Gabriel noted DPC works in rural areas, has a number of programs to work with patients with diabetes and is working on access issues. In response to how physical activity is being addressed in the school systems, Ms. Gabriel stated the CATCH program has a physical activity component.

Dorothy Danselner, deputy director of public health, and Donald Torres, DOH, gave an update on the HIV/AIDS program. Mr. Torres reviewed the overall HIV/AIDS incidence in New Mexico from 1990 to 2004. He stated that 160 new cases were reported in the state and there is generally an additional one-third percent across the country that are undiagnosed. There were six individuals in New Mexico who died from AIDS in 2004. Discussion occurred as to whether there should be expanded testing for HIV/AIDS. Mr. Torres responded that there has been a suggestion to expand testing, such as for women of child-bearing age. He stated New Mexico is a low-incident state rate-wise but is seeing a sharp increase in the Hispanic population. Mr. Torres noted that part of the effort in prevention is to target specific intervention in certain populations. There is also a shift in age group, but it is hard to account for this change. Female cases are 25 percent of the cases nationally and 13 percent of the cases in New Mexico.

Ms. Danselner reviewed the tobacco settlement funding of \$470,000 for the HIV/AIDS program, with \$310,000 for HIV/AIDS treatment services and \$160,000 for HIV/AIDS prevention services. She stated DOH is requesting the same funding for the upcoming year. The contractors and the amounts received were reviewed. Prevention funding includes providing harm reduction services, such as syringe exchange and overdose prevention training for \$132,350; purchasing television spots for national HIV Testing Day for \$7,511; and funding hepatitis B, C and HIV tests for the Paso del Norte Seroprevalence study for \$18,639. Ms. Danselner noted that \$1,500 of tobacco settlement funds was leveraged to obtain an additional \$55,000 from the U.S. AIDS Foundation for use by New Mexico prevention contractors in FY 2006. Ms. Danselner informed the committee members that there are strict performance measurements in place. Committee members encouraged increased testing. Mr. Torres noted that there has been a turnaround for treating HIV and the drug regimen is directly attributable for the decrease in deaths due to HIV/AIDS.

Glenn Smith, deputy attorney general, presented an update on the Master Settlement Agreement (MSA) and noted some concern regarding payments to states. Mr. Smith reminded committee members that the money received in the MSA is subject to adjustments based on a number of conditions. The first condition, whether the major tobacco companies originally

involved in the MSA experienced a drop in market share of over two percent, was experienced in 2003. The second condition to be satisfied is for an independent econometrics firm to determine whether participation in the MSA is a significant factor in the loss of market share. This study will probably conclude in the spring of 2006. He stated the National Association of Attorneys General have assembled resources for the purpose of enforcing the terms of the agreement and are working with outside counsel to demonstrate there was not a significant factor to occasion the market share loss. Because of this, there is a threat to the money received. He explained that money that would otherwise go to the states would go into a suspense account based upon a figure close to \$1.1 billion allocated to all the states based on the numbers. The final condition is that the states are required to diligently enforce their statutes regarding escrow.

Mr. Smith reviewed the basis of the MSA for committee members. He reminded the committee that he has urged that more resources be put forward for the Attorney General's Office and the Taxation and Revenue Department (TRD) to ensure escrow amounts are paid and paid in correct amounts. He stated the TRD is understaffed to gather the information from the distributors in the state.

Mr. Smith noted that this issue is occurring for FY 2003 and will need to be addressed each year. The committee members discussed the need to provide resources to prove diligent enforcement of the state's statutes. Senator Ryan made a motion that a letter be drafted and sent to the LFC recommending adequate staffing be available at the Attorney General's Office and the TRD to ensure enforcement of the model escrow statute. Motion was seconded. Representative Vaughn asked that the letter also be sent to the governor. The motion was adopted. Copies of the letter will also be sent to the attorney general and the secretary of taxation and revenue.

Larry Heyeck, deputy director, Human Services Department (HSD), and Virginia Alcon, HSD, gave a presentation on the Breast and Cervical Cancer program. Mr. Heyeck reviewed the program's history, eligibility and program benefits, the population served under the program, the distribution of program costs and the goals of the program. He noted the program has specific eligibility criteria and federal criteria for eligibility must also be reviewed. He stated women in the program receive full Medicaid coverage through fee for service. The population served during FY 2005 and FY 2004, the distribution of breast and cervical cancer costs during FY 2005 and FY 2004 and the distribution of program costs during FY 2005 and FY 2004 were reviewed. One goal of the program is to increase services and DOH has an extensive outreach program that includes advertising through a number of venues.

In response to a question on the connection between the DOH and the HSD for clients who are not Medicaid eligible, Mr. Heyeck said the departments coordinate communication to bring outreach and awareness of the program to those individuals who might fall between the gaps. Eighteen percent of the total cost is the state share. Mr. Heyeck will find out what, if any, administrative costs are associated with the program and communicate them to Representative Begaye.

Al Padilla, chief professional officer for Santa Fe Boys and Girls Club and administrator for the SMART Moves program, stated the New Mexico Alliance of Boys and Girls Clubs, Inc.,

(NMABGC) this year has chosen not to contract directly with the Santa Fe Boys and Girls Club to administer the SMART Moves program. Mr. Padilla noted the success with the program has been great but the Santa Fe Boys and Girls Club is limited in funds and needs additional funds to assist the program throughout the state. He stated the evaluator for the NMABGC has resigned in part due to a disagreement regarding the future direction of the program. The current funding through DOH was reviewed. A request for proposal (RFP) has resulted in the NMABGC receiving funds as a subcontractor and a RFP has been sent out to fill the evaluator position. Discussion occurred regarding the current issues facing the SMART Moves program and the need to gather more information in an investigatory process to better address the program's viability. Representative Chasey reminded the committee members there had been a past concern that the SMART Moves program should be funded through TUPAC programs through the DOH to ensure appropriate performance measures. Mr. Elmore addressed the funding issues through TUPAC and stated that NMABGC is the only organization that licenses SMART Moves. He stated there had been an agreement that the NMABGC would contract with DOH for TUPAC.

Having no further business, the committee adjourned at 12:00 noon after a motion duly made, seconded and unanimously adopted.

Material distributed at the meeting is in the meeting file in the Legislative Council Service library.